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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEDIDATA SOLUTIONS, INC.)	
)	
)	
Plaintiff,)	
)	No.
vs.)	1:15-cv-00907ALC
)	
FEDERAL INSURANCE COMPANY,)	
)	
)	
Defendant.)	

The discovery deposition of
MICHAEL MAILLET, called by the Plaintiff,
for examination, pursuant to notice, taken
before LAURA MUKAHIRN, CSR, a notary public
within and for the County of Cook and State
of Illinois, at One North Franklin Street,
Chicago, Illinois, on July 9, 2015,
scheduled to commence at 9:00 o'clock a.m.

1 factual summary of the claim; is that
2 correct?

3 A. I might. It might be a very
4 simple summary because, obviously, the
5 insured is aware of the claim as well as I
6 am.

7 Q. And that summary would include
8 the facts that you considered important to
9 that claim?

10 MR. SCHMOOKLER: Object to form.

11 THE WITNESS: It would consider
12 facts that I consider important in
13 discussing the claim with the insured.

14 BY MR. SUGZDA:

15 Q. And those facts would change
16 over time as you became aware of new facts?

17 A. It might.

18 Q. Turning now to the specific
19 facts of the wire transfer loss at issue in
20 this case. You were assigned to handle a
21 claim that came in from Medidata Solutions,
22 Inc.; is that correct?

23 A. Yes.

24 Q. In September of 2014?

25 A. In or about then, yes.

1 Q. And you came to understand that
2 that claim was started based on an e-mail
3 that a Medidata employee received; is that
4 correct?

5 MR. SCHMOOKLER: Object to form.

6 THE WITNESS: I mean an e-mail
7 received by a Medidata employee was part of
8 the facts of the case, yes.

9 MR. SUGZDA: I don't know if we
10 need to mark this. Just give me one second
11 to check. Scott, I believe this was
12 already marked as Exhibit 14, is that
13 correct, if you want to look?

14 MR. SCHMOOKLER: It was marked.
15 I don't remember what number, but if you
16 say it's 14, I'll trust you.

17 MR. SUGZDA: Let me check. So,
18 Scott, the screen shot was marked. I'm
19 going to mark this as a separate Exhibit.

20 MR. SCHMOOKLER: Yeah. Go for
21 it.

22 MR. SUGZDA: Can you mark this
23 as Exhibit 19?

24

25

1 these things are done. But it's likely
2 that it would be difficult for someone to
3 actually -- the person could sign their
4 name and then scan it. I really don't
5 know.

6 BY MR. SUGZDA:

7 Q. Leaving the signature issue
8 aside for a moment, would you agree that in
9 a genuine, nonfraudulent e-mail, that the
10 from line of the sender reflects -- the
11 from line reflects the e-mail address of
12 the person who actually sent the e-mail?

13 MR. SCHMOOKLER: Object to form.

14 THE WITNESS: To the best of my
15 understanding, that would be correct.

16 BY MR. SUGZDA:

17 Q. And in the e-mail in front of
18 you marked Exhibit 19, the from line shows
19 [REDACTED] real e-mail address at
20 Medidata?

21 A. That's what I've been told,
22 yes.

23 Q. However, in the course of your
24 investigation, you learned that
25 [REDACTED] did not send this e-mail; is

1 clears that up.

2 BY MR. SUGZDA:

3 Q. Mr. Maillet, do you see the
4 date of this letter is December 24, 2014?

5 A. Yes.

6 Q. And you -- And the conclusion
7 you reached in this letter was that the
8 claim Medidata made was not covered under
9 its policy for Federal Insurance Company?

10 A. Yes.

11 Q. So this letter represented the
12 facts as you understood them at the end of
13 your investigation; is that correct?

14 A. Yes.

15 Q. And so based on that
16 investigation, you understood that there
17 was a series of fraudulent e-mails; is that
18 correct?

19 A. Again, that's, yeah, I
20 understood that was the allegation made by
21 Medidata.

22 Q. And in the course of that
23 investigation up until December 24, you
24 hadn't seen any evidence to contradict that
25 understanding?

1 A. That's correct.

2 Q. And is the document marked as
3 Exhibit 19 one of the e-mails you
4 understood to be part of the series of
5 fraudulent e-mails?

6 A. Yes. It's one of the series of
7 e-mails which Medidata was alleging were
8 fraudulent.

9 Q. And, again, you had no evidence
10 to contradict that allegation?

11 A. Correct.

12 Q. So returning to Exhibit 19, I
13 would ask you, again, do you consider this
14 to be a fraudulent e-mail?

15 MR. SCHMOOKLER: Object to form.
16 Don't disclose our legal strategy or mental
17 impressions or work product, Mike. All of
18 that, what we're intending to do going
19 forward is privileged. But you can answer
20 in terms of what you did during your
21 investigation.

22 BY MR. SUGZDA:

23 Q. And to be clear, for the
24 record, Scott, I'm asking him about how he
25 characterized it in the final letter of his

1 objecting to. But if you go ahead.

2 BY MR. SUGZDA:

3 Q. Would you like the question
4 read back to you?

5 A. No.

6 Q. Okay.

7 A. I would say that that -- Well,
8 actually, maybe I should have the question
9 read back.

10 (Whereupon the following
11 was read back: "And is
12 the from line of an
13 e-mail a representation
14 of information?")

15 THE WITNESS: I would say I
16 have no reason to think it wouldn't be a
17 representation of information. Yes.

18 BY MR. SUGZDA:

19 Q. And in the e-mail marked as
20 Exhibit 19, the from line, based on your
21 understanding which you had no evidence to
22 contradict in your investigation, the from
23 line is a misrepresentation of information?

24 MR. SCHMOOKLER: Object to form.

25 THE WITNESS: I would say that

1 not sent by [REDACTED]?

2 A. That's what I was told, and I
3 have no reason to believe otherwise.

4 Q. And, again, it's your
5 understanding based on your investigation
6 that this e-mail was created by somebody
7 typing [REDACTED] actual e-mail address
8 in the from line of an e-mail and a
9 different e-mail address in the reply to
10 line of the e-mail?

11 MR. SCHMOOKLER: Object to form.

12 THE WITNESS: That's my
13 understanding of what's alleged by
14 Medidata, yes, and I have no reason to
15 believe otherwise.

16 BY MR. SUGZDA:

17 Q. And in this e-mail, the
18 individual purporting to be [REDACTED]
19 instructs two other individuals -- I'm
20 sorry. Let's back up. Strike that.

21 This e-mail is addressed to
22 what appears in this e-mail as [REDACTED] and
23 [REDACTED]; is that correct?

24 A. That's what appears on the
25 e-mail, except that it also mentions

1 the bottom to send the confirmation to
2 Michael when you receive it.

3 Q. In the course of -- Strike
4 that.

5 Given the series of fraudulent
6 e-mails that you identified in your
7 December 24 letter, would you consider --
8 Did you form a conclusion as to whether or
9 not this was an instruction in the context
10 of that series of e-mails?

11 MR. SCHMOOKLER: Object to form.

12 THE WITNESS: I formed a
13 conclusion that there was an instruction to
14 do a wire transfer. As to whether this
15 particular document was an instruction, it
16 doesn't appear to be, no.

17 BY MR. SUGZDA:

18 Q. But you did form a conclusion
19 that in the course of these e-mails there
20 was an instruction to complete a wire
21 transfer?

22 MR. SCHMOOKLER: Object to form.

23 THE WITNESS: Yes.

24 BY MR. SUGZDA:

25 Q. And did you form a conclusion

1 transfer would not have gone forward?

2 MR. SCHMOOKLER: Object to form.

3 Calls for speculation.

4 THE WITNESS: It does call for
5 speculation. There could have been other
6 ways in which this could have been carried
7 out.

8 BY MR. SUGZDA:

9 Q. But given the understanding
10 based on the facts of this claim that you
11 became aware of during your investigation,
12 this specific transfer was only carried out
13 because the individual purported to be [REDACTED]
14 [REDACTED], the [REDACTED] of Medidata?

15 MR. SCHMOOKLER: Object to form.
16 Mike, only answer based on what you learned
17 in the investigation. Don't talk about or
18 disclose anything we've -- any conclusions
19 we've drawn off the current depositions.

20 THE WITNESS: I wouldn't agree
21 that the e-mails were the only reason that
22 the transaction took place.

23 BY MR. SUGZDA:

24 Q. So based on your investigation,
25 do you see a series of causal events

1 causing the ultimate transfer?

2 MR. SCHMOOKLER: Object to form.

3 Mike, only disclose that to the extent you
4 reached a conclusion in your investigation.
5 Don't talk about or disclose what our
6 intended strategy will be on summary
7 judgment.

8 THE WITNESS: There were a
9 number of circumstances which led to the
10 transfer.

11 BY MR. SUGZDA:

12 Q. And the first of those
13 circumstances was the e-mail from the
14 individual purporting to be [REDACTED]
15 that we've marked as Exhibit 19?

16 MR. SCHMOOKLER: Object to form.

17 THE WITNESS: Chronologically,
18 yes.

19 BY MR. SUGZDA:

20 Q. I'd like to -- We've delved
21 into this a good amount already, but I'd
22 like to formally change facts from the
23 actual underlying facts of the claim to
24 your investigation of the claim. You were
25 assigned to this claim on September 26,

1 2014; is that correct?

2 A. On or about that time, yes.

3 Q. Do you know why you were
4 assigned to this claim?

5 A. Yes.

6 Q. And why was that?

7 A. There was a discussion within
8 the claim department, and considering the
9 amounts involved, it was decided that I
10 would be the best person to handle it.

11 Q. And did you have any
12 understanding of why you were the best
13 person to handle it given the amounts
14 involved?

15 A. Given my role as regional claim
16 technician, part of my responsibility is to
17 be involved in the more complex and large
18 dollar amount claims. And this was
19 considered one of those.

20 Q. But specifically it would have
21 had to have been a large dollar amount
22 claim in the fidelity or crime context,
23 correct?

24 A. Right.

25 Q. And do you have an

1 understanding as to whether there were any
2 other regional claims technicians who had
3 your same background or experience with
4 e-mail spoofing claims?

5 A. In the fidelity claim context,
6 the answer is no. I'm the only one.

7 Q. So when we discussed earlier
8 using your experience in prior claims to
9 inform your handling of new claims, in fact
10 you were the only regional claim technician
11 at Federal who would have been able to
12 apply prior e-mail spoofing experience to
13 Medidata's claim?

14 MR. SCHMOOKLER: Object to form.

15 THE WITNESS: The only person in
16 that position, yes.

17 BY MR. SUGZDA:

18 Q. And that position being
19 regional claim technician, correct?

20 A. Right.

21 Q. Okay. Did you receive any
22 assistance from other regional claim
23 technicians in the handling of Medidata's
24 claim?

25 A. I'm sorry. Could you repeat

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1 that applied both to employee theft and the
2 other coverages?

3 A. As related to a claim under the
4 insuring clauses under which claim was
5 being made, yes.

6 Q. So you don't know whether or
7 not if an insider had been involved that
8 the claim would have been covered under the
9 employee theft coverage; is that correct?

10 A. Correct, without conducting an
11 investigation of that type of claim.

12 Q. And your investigation of the
13 claim did not reveal that an insider had
14 been involved with the fraud; is that
15 correct?

16 A. That's correct. I had no
17 reason to -- I was told that Medidata's
18 investigation did not reveal any insider
19 involvement, and I had no reason to
20 question that.

21 Q. Now, starting with the next
22 paragraph that begins "MO advised." Do you
23 see the first line where it says, "MO
24 advised that Medidata's systems were not
25 penetrated"?

1 MR. SCHMOOKLER: Object to form.

2 THE WITNESS: I had enough
3 information to know that that was what was
4 being alleged by Medidata, yes.

5 BY MR. SUGZDA:

6 Q. And at that point you had not
7 received any information that would cause
8 you to doubt that characterization?

9 A. Correct.

10 Q. And if you turn over on to
11 Page 714, there are a series of numbered
12 paragraphs. Do you see those?

13 A. Yes.

14 Q. And is it correct that this is
15 information that you thought would be
16 necessary to properly evaluate the claim?

17 A. I thought it was information
18 that might be helpful in evaluating the
19 claim.

20 Q. With the exception of the
21 report prepared by Fulbright & Jaworski
22 which you were advised was privileged that
23 you requested in No. 5, do you have any
24 reason to believe you did not receive the
25 rest of the information you requested?

1 A. No. I have no reason to
2 believe that.

3 Q. And is it correct that at no
4 point in this letter did you request any
5 information pertaining to the internal
6 policies and procedures at Medidata
7 governing wire transfers?

8 A. I think that information would
9 be part of what I was requesting in
10 Paragraph 5, and I assumed it would be
11 included in any reports by
12 Fulbright & Jaworski or our forensic
13 experts.

14 Q. So you believed that
15 information about the internal policies and
16 procedures at Medidata regarding wire
17 transfers would be helpful in the
18 investigation of this claim?

19 A. I don't recall specifically at
20 the time whether I believed that.

21 Q. Based on this letter, do you
22 believe that at the time you thought that
23 information was -- would be helpful?

24 A. I think by requesting -- the
25 requesting in Paragraph 5, I was seeking as

1 A. Right. That's including the
2 last sentence you left out some words, but
3 that's correct.

4 Q. Okay. And you were aware at
5 this point as a result of your
6 investigation that the perpetrator of the
7 fraud had purported to be the [REDACTED] of
8 Medidata?

9 A. It appeared to be the case,
10 yes.

11 Q. And appeared that way in e-mail
12 correspondence to Medidata employees?

13 A. That's what appeared to be the
14 case, yes.

15 Q. And those e-mails were viewed
16 on Medidata's computer system?

17 MR. SCHMOOKLER: Object to form.

18 THE WITNESS: That's what I was
19 told, yes. I had no reason to believe
20 otherwise.

21 BY MR. SUGZDA:

22 Q. And your statement here is that
23 you believed that that individual was
24 authorized to act as Medidata's [REDACTED]
25 on Medidata's computer system?

1 Q. But your conclusion -- You had
2 no evidence that the from line of the
3 e-mail was altered?

4 A. Correct.

5 Q. So based on your understanding
6 of the facts of the fraud during and
7 immediately after your investigation, the
8 perpetrators of the fraud put something in
9 the from line that wasn't supposed to be
10 there and took what was supposed to be in
11 the from line and put it somewhere else,
12 but they didn't alter the from line?

13 MR. SCHMOOKLER: Object to form.
14 Calls for speculation. Asked and answered
15 numerable times.

16 THE WITNESS: I don't know
17 exactly what the people that sent the
18 e-mail did. As it was related to me that
19 that's what was related, but I agree with
20 your last statement that there's nothing to
21 suggest that they altered anything in the
22 from line.

23 BY MR. SUGZDA:

24 Q. Just to close the loop on that
25 question, you don't know what the

1 perpetrators of the fraud did. That's
2 correct?

3 A. I don't know precisely what
4 they did. That's correct.

5 Q. But you do know that what was
6 in the from line of the e-mail should not
7 have been there, correct?

8 MR. SCHMOOKLER: Object to form.

9 THE WITNESS: I'm not sure how
10 to answer that question. When you say
11 should not have been, you know, I don't
12 know who's the judge of what should be or
13 what shouldn't be. What was in there
14 purported to be the e-mail of [REDACTED]
15 and apparently it wasn't.

16 BY MR. SUGZDA:

17 Q. And [REDACTED] didn't send
18 the e-mail?

19 MR. SCHMOOKLER: Object to form.
20 Asked and answered.

21 THE WITNESS: That's what I've
22 been told and have no reason to disagree.

23 BY MR. SUGZDA:

24 Q. So [REDACTED] e-mail should
25 not have been in the from line?

1 A. Yes.

2 Q. Are you aware if the word
3 hacking appearing anywhere in the Federal
4 Executive Protection Portfolio Policy
5 issued to Medidata?

6 A. Not that I'm aware of, no.

7 Q. Do you have any reason to
8 believe that it appears anywhere in that
9 policy?

10 A. No.

11 Q. If you could refer to the
12 policy, if you'd like, for this next
13 question. What language in the policy do
14 you think supports the contention that
15 hacking is required under the computer
16 fraud coverage?

17 A. I would say the policy as a
18 whole, and the language requiring a
19 fraudulent entry of data into or deletion
20 of data from a computer system, or the
21 fraudulent change to data elements or
22 program logic of a computer system which is
23 kept in machine readable format, or
24 introduction of instructions, programatic
25 or otherwise, which propagate themselves

1 given you.

2 THE WITNESS: It might include
3 the actions of imposters if they hack into
4 the insurance systems.

5

6 BY MR. SUGZDA:

7 Q. It could include the actions of
8 imposters to the extent those actions
9 otherwise satisfy the computer violation
10 definition?

11 MR. SCHMOOKLER: Objection.
12 Same instruction.

13 THE WITNESS: It could include
14 the actions of imposters to the extent they
15 comply with the definitions of computer
16 violation and all the other terms and
17 conditions of the policy.

18 BY MR. SUGZDA:

19 Q. And you stated earlier that
20 while you consulted Mr. Robbibaro's letter
21 that was marked earlier, in creating this
22 letter you omitted certain language that
23 you didn't think was relevant to the
24 Medidata claim. Is that true?

25 A. That would have been my

1 50,000?

2 A. Yes.

3 Q. Are you aware as a result of
4 your investigation of any facts that would
5 support the application of exclusion 12(k)
6 listed in the third affirmative defense to
7 Medidata's loss?

8 A. Yes.

9 Q. And what facts are those?

10 A. Looking back at Exhibit 19, the
11 initial e-mail purporting to be from [REDACTED]
12 [REDACTED] starts out by saying, "In regards
13 to an acquisition that we are currently
14 undergoing." And so that suggests to me
15 that the transaction, the purported
16 transaction or the intention of sending the
17 money by wire was in connection with an
18 acquisition, which would be a purchase.

19 Q. And are you aware of any facts
20 indicating that Medidata received anything
21 for the purchase price it paid?

22 A. No.

23 Q. And are you aware of any facts
24 indicating that in exchange for the
25 \$4.7 million it wired that Medidata

1 received anything in that exchange?

2 A. No.

3 Q. Moving down to the fourth
4 affirmative defense, are you aware over the
5 course of your investigation or as
6 Federal's representative of any fraudulent,
7 dishonest, or criminal act committed by an
8 authorized representative of Medidata in
9 connection with this claim?

10 A. I wouldn't say that I'm aware
11 of any fraudulent, dishonest, or criminal
12 act committed by an authorized
13 representative. But I'm aware of forgery,
14 computer fraud, funds transfer fraud as
15 those terms are defined which are alleged
16 by Medidata to have been committed by an
17 authorized representative of an insured
18 acting alone or in collusion with others.

19 Q. What authorized representative
20 are you referring to?

21 A. The employees of Medidata who
22 conducted the wire transfer.

23 Q. So Federal's position is that
24 the employees of Medidata who conducted the
25 wire transfer may have committed forgery,

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